

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF RED ROCK PORTALES
CARD STOP RED TAG PLACEMENT
AND INELIGIBILITY FOR DELIVERY
FID #301790, NOV #2420202104150065**

No. PSTB 21-53

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

Pursuant to 20.1.5.600(B) NMAC, the Petroleum Storage Tank Bureau (“Bureau”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED”) and Portales Card Systems Partnership, the owner and operator (Owner ID No. 16388/ Operator ID No. 03482) (collectively, the “Parties”) of the underground storage tanks located at Red Rock Portales Card Stop, 1523 Avenue D, Portales, New Mexico (“Facility”) (Facility ID No. 30179) have entered into a Settlement Agreement and Stipulated Final Order (“Final Order”) to resolve the appeal of the Notice of Intent to Red Tag issued on June 9, 2021 and subsequent red tag affixed to one underground storage tank (“UST”) (Tank ID No.29457). Delivery Prohibition is authorized by the Hazardous Waste Act (“HWA”), NMSA 1978, Sections 74-4-1 to -14 (1953, as amended through 2021), and the Petroleum Storage Tank Regulations, 20.5 NMAC, (“Regulations”), which includes the Delivery Prohibition regulations found at 20.5.116 NMAC. For the purpose of this Final Order, the Parties admit to the jurisdictional allegations and relief specified herein.

I. FINDINGS OF FACT

A. PARTIES

1. NMED is an agency of the executive branch of the State of New Mexico created pursuant to NMSA 1978, Section 9-7A-4 (2005).
2. NMED is charged with the administration and enforcement of the HWA and the Regulations.
3. Pursuant to the Delegation Order dated May 24, 2021, the Secretary of the Department has retained signatory authority to execute Settlement Agreements and Stipulated Final Orders.
4. Portales Card Systems Partnership is the registered owner and operator of the UST (Tank ID No. 29457) with NMED, located at the Facility.

B. NATURE OF DISPUTE

5. On May 21, 2021, Portales Card Systems Partnership was issued a List of Class A Violations (“LCAV”) for the UST at the Facility in violation of the Regulations.
6. The violations alleged within the May 21, 2021, LCAV were:
 - (a) Failure to use interstitial monitoring on pressurized piping installed or replaced, on or after, April 4, 2008, on a UST system pursuant to 20.5.108.811 NMAC (Tank ID No. 29457); and
 - (b) Failure to ensure that any portion of a UST system that routinely contains a regulated substance and is in contact with the ground, water, or other electrolyte is protected from corrosion pursuant to 20.5.106.600.(A)(3)

NMAC (Tank ID No. 29457).

7. The LCAV informed Portales Card Systems Partnership that the violations must be corrected within thirty days from the date of the Notice of Intent to Red Tag (“NOIRT”).

8. On June 9, 2021, Portales Card Systems Partnership was issued a NOIRT for Class A violations for the UST at the Facility in violation of the regulations, pursuant to 20.5.116.1602(B)(3) NMAC, requiring Portales Card Systems Partnership to correct the violations within thirty days from the date of the NOIRT.

9. The alleged violations within the NOIRT were:

(a) Failure to use interstitial monitoring on pressurized piping installed or replaced, on or after, April 4, 2008, on a UST system pursuant to 20.5.108.811 NMAC (Tank ID No. 29457); and

(b) Failure to ensure that any portion of a UST system that routinely contains a regulated substance and is in contact with the ground, water, or other electrolyte is protected from corrosion pursuant to 20.5.106.600.(A)(3) NMAC (Tank ID No. 29457).

10. The violations in the NOIRT were not corrected within the required timeframe. As such, a red tag, as defined in 20.5.101.7.R(3) NMAC, was placed on the UST with Tank ID No. 29457 on September 29, 2021, pursuant to 20.5.116.1603(A) and 20.5.116.1606(A) NMAC, and a certificate was posted at the Facility in accordance with 20.5.116.1603(B) NMAC. Additionally, the Bureau notified all product deliverers of the red tags by posting the name and address of the Facility on the Bureau’s website, which contains a list of facilities with storage tanks

that are ineligible for delivery, pursuant to 20.5.116.1606(B) NMAC.

II. COMPROMISE AND SETTLEMENT

11. On October 5, 2021, Portales Card Systems Partnership submitted a timely written Request for Hearing to the Office of Public Facilitation (“OPF”) pursuant to 20.5.116.1611(A) NMAC, requesting a hearing before the Secretary of the Environment to appeal the red tag that the Bureau affixed to Tank ID No. 29457.

12. On October 7, 2021, OPF held a Scheduling Conference with the Parties and a hearing date was scheduled for October 13, 2021 at 1:00 p.m.

13. On October 12, 2021, the Parties filed a Joint Motion for Extension seeking to postpone the hearing from October 13, 2021 to November 3, 2021 so the Parties could seek an alternate resolution to this matter.

14. On October 12, 2021, the Hearing Officer issued an Order granting the Parties' Joint Motion for Extension so the Parties could seek an alternate resolution to this matter.

15. As a result of the settlement discussions, the Parties have entered into this Final Order.

16. The Parties agree to the following conditions:

- (a) Within two business days following the effective date of this Final Order, the Bureau shall remove the red tag on Tank No. 29457 in conjunction with the Portales Card Systems Partnership’s commitment to perform the work discussed in sub-paragraphs 16(b)-(e) of this Final Order within the required timeframe;

- (b) Portales Card Systems Partnership shall meet the requirements for retraining of Class A/B Operators following significant violations, as required in 20.5.104.406(B) NMAC. The Class A/B Operators shall be re-trained within 60 calendar days from the effective date of this Final Order unless the Class A/B Operators meet the requirements in 20.5.104.406(C) NMAC;
- (c) Portales Card Systems Partnership shall provide the Bureau with documentation that it has entered into a contract with a UST certified installer that meets the requirements in 20.5.105.500 NMAC and 20.5.105.505 NMAC, to remove the existing piping, conduct a site assessment, and install new secondarily contained piping, secondary containment sumps, and necessary equipment for interstitial monitoring. Portales Card Systems Partnership shall also provide the Bureau with a schedule to complete the installation of the underground pressurized piping. Portales Card Systems Partnership shall provide the requested documentation in this sub-paragraph as soon as possible but no more than ten calendar days before the work in sub-paragraph 16(d) will begin;
- (d) Portales Card Systems Partnership shall remove the existing single walled piping from the storage tank system and perform a site assessment in accordance with 20.5.107.709(G) NMAC and install secondary containment for the underground pressurized piping to include secondary

containment sumps in accordance with 20.5.106.606(C)(3) NMAC, along with the equipment necessary to perform interstitial monitoring on Tank ID No. 29457 in accordance with 20.5.108.811 NMAC (see Exhibit A). The work discussed in this paragraph shall be completed as soon as possible but no later than the deadline provided by Portales Card Systems Partnership, as discussed in the October 11, 2021, 4-K Environmental correspondence, which provided a deadline of December 1, 2021 (see Exhibit B);

- (e) No later than 24 hours prior to each critical juncture as listed in 20.5.107.711(A) NMAC, Portales Card Systems Partnership shall notify the Bureau contacts discussed in paragraph 23 of this Final Order of the work to be completed during the critical juncture. Portales Card Systems Partnership shall notify the Bureau 24 hours prior to the completion of the work so the Bureau can inspect the Facility and ensure the work performed meets the requirements of the Regulations. Bureau staff may also conduct periodic unannounced inspections throughout the term of this Final Order.

17. If the work described in sub-paragraph 16(d) of this Final Order does not occur within the required timeframe, the Bureau will affix a red tag to the UST with Tank ID No. 29457 immediately and without notice.

18. If the ownership of the UST with Tank ID No. 29457 changes (e.g., if the tanks are sold, leased or transferred) prior to completion of the work described in sub-paragraph 16(d) of this Final Order, the Bureau will affix a red tag to the UST with Tank ID No. 29457

immediately and without notice.

19. If Portales Card Systems Partnership fails to meet any of the deadlines or requirements outlined in sub-paragraphs 16(a) through 16(e) of this Final Order, Portales Card Systems Partnership will be required to remit stipulated penalties of \$100 per day for each violation until the requirements or deadlines have been met. The stipulated penalties shall be collected pursuant to NMSA 1978, Section 74-4-10(J) of the HWA. The Bureau shall issue a written notification to Portales Card Systems Partnership of the requirement or deadline that has not been met.

20. If Portales Card Systems Partnership fails to come into compliance with the requirements in sub-paragraphs 16(a) through 16(e) of this Final Order within 30 calendar days from the date of the Bureau's notification letter issued pursuant to paragraph 19 of this Final Order, Portales Card Systems Partnership will be required to remit stipulated penalties of \$200 per day for each ongoing violation until the requirements or deadlines have been met.

21. The Bureau shall issue weekly invoices for the stipulated penalties. If Portales Card Systems Partnership fails to comply with the Bureau's weekly invoices and fails to remit payment for the stipulated penalties, NMED may seek enforcement of this Final Order by administrative or judicial action, as discussed in paragraph 25 of this Final Order.

22. Payment for the stipulated penalties shall be made to the *State of New Mexico Hazardous Waste Emergency Fund* by certified or corporate check, or by ACH deposit. On the date that delivery of funds by check or ACH is confirmed, Portales Card Systems Partnership shall notify the Bureau contacts discussed in paragraph 23 of this Final Order.

Certified or corporate checks shall be sent to the following:

New Mexico Environment Department
Petroleum Storage Tank Bureau
c/o Program Manager
2905 Rodeo Park Dr. East, Bldg. 1
Santa Fe, New Mexico, 87505

23. All communications regarding the components of this Final Order shall be sent to:

PSTB.Inbox@state.nm.us

With copies to:

Joe Godwin, Manager, Prevention Inspection Program
E-mail: joe.godwin@state.nm.us

and

Elmer Smith, Inspector, Prevention Inspection Program
E-mail: elmer.smith@state.nm.us

III. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

24. NMED retains the right to pursue any relief authorized by the HWA, the Regulations, or other law for any violation not addressed herein.

25. NMED retains the right to enforce this Final Order by administrative or judicial action.

26. In the event that NMED elects to file a judicial action to enforce this Final Order, the Parties agree that the First Judicial District Court of Santa Fe County, New Mexico shall have exclusive jurisdiction over the Parties and the Final Order. The Parties agree to waive any

right to challenge that jurisdiction or venue lies with the First Judicial District Court of Santa Fe County, New Mexico.

27. The laws of the State of New Mexico shall govern the construction and interpretation of this Final Order.

B. BINDING EFFECT

28. This Final Order shall be binding upon NMED and its successor agencies and shall be binding upon the Portales Card Systems Partnership and its officers, directors, employees, agents, subsidiaries, heirs, assigns, trustees, receivers, and any successors-in-interest if there is transfer of ownership for any storage tank systems under 20.5.102.201 NMAC.

C. EFFECTIVE DATE

29. This Final Order and any modifications thereto shall be effective when the Final Order or modification has been executed by both of the Parties.

D. INTEGRATION

30. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order and contains the entire agreement between the Parties.

E. MODIFICATION

31. This Final Order shall not be modified except by express written agreement of both Parties.

F. RESERVATION OF RIGHTS AND DEFENSES

32. This Final Order shall not be construed to prohibit or limit NMED in any

way from requiring Portales Card Systems Partnership, its officers, directors, employees, agents, subsidiaries, heirs, assigns, trustees, receivers, and any successors-in-interest if there is transfer of ownership for any storage tank systems under 20.5.102.201 NMAC, to comply with any state or federal requirements that are not resolved herein. This Final Order shall not be construed to prohibit or limit NMED in any way from seeking any relief authorized by the HWA or Regulations for violation of any state or federal requirement applicable to Portales Card Systems Partnership not resolved herein, including the issuance of penalties under NMSA 1978, Section 74-4-10 of the HWA. This Final Order shall not be construed to prohibit or limit Portales Card Systems Partnership in any way from raising any defense to a NMED action seeking such relief.

33. This Final Order shall not be construed to be a Compliance Determination under 20.5.123 NMAC nor shall removal of the red tags eliminate any existing compliance issues at the Facility for the purpose of accessing the Corrective Action Fund in NMSA 1978, Section 74-6B-7 (2004). Portales Card Systems Partnership, its officers, directors, employees, agents, subsidiaries, heirs, assigns, trustees, receivers, and any successors-in-interest if there is transfer of ownership for any storage tank systems under 20.5.102.201 NMAC, shall be liable for any contamination discovered at the Facility during the terms of this Final Order. If there is discovery of a suspected or a confirmed release at the Facility, Portales Card Systems Partnership, its officers, directors, employees, agents, subsidiaries, heirs, assigns, trustees, receivers, and any successors-in-interest if there is transfer of ownership for any storage tank systems under 20.5.102.201 NMAC, shall comply with the Regulations and HWA for investigating the suspected release and for any remediation that may follow, including but not limited to, conducting an investigation

within seven days of discovery of the suspected release and submitting any investigation report to NMED, as required by 20.5.118.1801(B) NMAC.

G. WAIVER OF STATE LIABILITY

34. Portales Card Systems Partnership, its officers, directors, employees, agents, subsidiaries, heirs, assigns, trustees, receivers, and any successors-in-interest if there is transfer of ownership for any storage tank systems under 20.5.102.201 NMAC, shall assume all costs and liabilities incurred in performing any obligation under this Final Order.

35. NMED, on its own behalf, and on behalf of the State of New Mexico, shall not assume any liability for the performance of any obligation under this Final Order.

H. DISCLOSURE TO SUCCESSORS-IN-INTEREST

36. Portales Card Systems Partnership shall disclose this Final Order to any successor-in-interest and shall advise such successor-in-interest that the Final Order is binding on the successor-in-interest. Portales Card Systems Partnership shall also copy the Bureau in such correspondence using the contact information discussed in paragraph 23 of this Final Order.

J. AUTHORITY OF SIGNATORIES

37. The persons executing this Final Order represent that they have the requisite authority to bind either NMED or Portales Card Systems Partnership, as appropriate, to this Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind NMED or Portales Card Systems Partnership to this Final Order.

K. SIGNATURE AND COUNTERPARTS

38. This Final Order is intended to be executed on separate signature pages.

**PORTALES CARD SYSTEMS PARTNERSHIP
OWNER AND OPERATOR FOR RED ROCK PORTALES CARD STOP**

BY: 
RANDALL KNIGHT, PRESIDENT
Portales Card Systems Partnership
(Owner ID No. 16388/ Operator ID No. 03482)

DATE: 11-1-21

NEW MEXICO ENVIRONMENT DEPARTMENT

BY: **Stephanie Stringer** Digitally signed by Stephanie Stringer
Date: 2021.11.01 20:05:18 -06'00'

JAMES C. KENNEY
SECRETARY

DATE: _____

From: Randy Knight
To: [REDACTED]
Subject: [REDACTED]
Date: Monday, October 11, 2021 1:19:14 PM
Attachments: [REDACTED]

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Sent from my iPad

Begin forwarded message:

From: Brandon Wieland <bwiwlands@hotmail.com>
Date: October 11, 2021 at 12:27:46 PM MDT
To: "Randy Knight-Red Rock Oil (randall.knight@hotmail.com)" <randall.knight@hotmail.com>
Subject: Portales Letter and Invoice

Thanks

4-K ENVIRONMENTAL, INC
2655 SR 108
TEXICO, NM 88135
PH# 575-749-0438

DATE 7-29 2021 3013 95-679/1122

Double M Pump, PAY TO THE ORDER OF Double M Pump \$20,247.36
twenty thousand and two hundred forty seven and 36/100 DOLLARS

American Heritage Bank 3300 N. Prince St. Clovis, NM 88101
P.O. Box 318 Midvale, NM 88114
(575) 762-2800 (575) 253-4500

Customer: 4K Environmental
Site: Red Rock Port
Address: 2655 SR 108 Te

MEMO

1122067921 0242969 3013

Scope of Work/Project Description:

Qty	Description	Unit Price	Line Total
1.00	OPW Tank Sump Medium Bury	\$ 908.80	\$ 908.80
1.00	OPW Tank Sump Adaptor	\$ 260.00	\$ 260.00
6.00	OPW Flex Pipe Coupling 1 1/2	\$ 142.15	\$ 852.90
1.00	OPW Wayne Disp. Sump	\$ 841.97	\$ 841.97
2.00	OPW Wayne Sat. Sump	\$ 841.97	\$ 1,683.94
5.00	Stabilizer Bar	\$ 92.30	\$ 461.50
1.00	OPW Flex Pipe Coupling 2"NPT x 1 1/2" Flex	\$ 88.69	\$ 88.69
6.00	Flex 1 1/2 Dbl. Wall Pipe Entry Boots	\$ 56.48	\$ 338.88
8.00	Flex 3/4-1" Conduit Entry Boots	\$ 54.94	\$ 439.52
1.00	TLS350 Tank Monitor (refurbished)	\$ 4,153.84	\$ 4,153.84
1.00	TLS350 Probe Module	\$ 825.00	\$ 825.00
1.00	TLS350 Sensor Module	\$ 1,946.15	\$ 1,946.15
4.00	TLS350 Sensor	\$ 361.54	\$ 1,446.16
3.00	TLS350 Probes, 8'	\$ 1,500.00	\$ 4,500.00
2.00	VR 4" Phase-Two Gasoline Floor Kit	\$ 530.77	\$ 1,061.54
1.00	VR 4" Diesel Floor Kit	\$ 438.46	\$ 438.46
		\$ -	\$ -
		\$ -	\$ -
		\$ -	\$ -

Estimate prepared by: Eric Martin

Subtotal \$ 20,247.35
Sales Tax
Total \$ 20,247.35

This is an estimate for completing the job as described above. It is based on our visual evaluation and does not include parts price increases or additional labor and parts which may be required should unforeseen problems arise after the work has started. If prices change or additional parts and/or labor are required we will inform you prior to proceeding with the work. This estimate is non-contractual.

To accept this estimate, sign here and return:

PO Box 53575 Midland, TX 79710 Cell: 432-634-0835 Email me at: Eric@doublempump.net

4-K ENVIRONMENTAL

2655 SR 108 Texico, NM 88135

October 11, 2021

Red Rock Oil
Portales, NM

DESCRIPTION

To whom it may concern 4K Environmental will install new double wall pipe along with all the appropriate equipment.

The time frame for this job will be completed by 12-1-21.

I have attached material list.

Thank You, Brandon

Thank You!

If you have any questions please call. (Brandon Wieland 575-749-0438)